

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

STATE OF NEW MEXICO ex rel. RAÚL
TORREZ, District Attorney, Second Judicial
District,

Plaintiff,

v.

D-202-CV-2020-04051

NEW MEXICO CIVIL GUARD, et al.,

Defendants.

**ORDER GRANTING: (1) PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT
JUDGMENT AGAINST DEFENDANT NEW MEXICO CIVIL GUARD, FOR ORDER
TO SHOW CAUSE, AND FOR SPOILIATION SANCTIONS; AND (2) PLAINTIFF'S
MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST DEFENDANT NEW
MEXICO CIVIL GUARD**

THIS MATTER came before the Court on: (1) Plaintiff State of New Mexico's Motion for Entry of Default Judgment Against Defendant New Mexico Civil Guard (NMCG), for Order to Show Cause Why NMCG Should Not Be Held in Contempt, and for Spoliation Sanctions Against NMCG and Defendant Bryce Leroy Spangler Provance, filed on April 11, 2022 (the April 11 Motion); and (2) Plaintiff State of New Mexico's Motion for Entry of Default Judgment Against Defendant New Mexico Civil Guard, filed on July 5, 2022 (the July 5 Motion). Having reviewed the submissions of the parties and conducted a hearing on September 22, 2022, and being otherwise fully informed, the Court **grants** the motions as follows:

The April 11 Motion: A default judgment against NMCG is appropriate under Rule 1-037(B)(2)(c) NMRA because NMCG failed to obey the Court's January 3, 2022, Order requiring NMCG to produce a Rule 1-030(B)(6) NMRA deponent. The circumstances here clearly show a flagrant, willful, bad faith, callous disregard of the Court's Order. As a result, the severe sanction

of default judgment is warranted. In addition, NMCG shall be required to pay the reasonable expenses, including attorney's fees, caused by its failure to comply with the Court's Order.

A default judgment against NMCG is also warranted as a spoliation sanction. First, NMCG's degree of fault weighs heavily in the State's favor, as Mr. Provance testified to willfully destroying records at a time when he had reason to know of pending or future litigation. Second, the degree of prejudice also weighs heavily in the State's favor, as Mr. Provance testified that he was the only person who had possession of the documents he destroyed, and the State therefore will not be able to obtain the documents from another source. Finally, in balancing the degree of fault of Mr. Provance's conduct against the magnitude of prejudice to the State, the Court finds that no lesser sanction than default judgment is appropriate.

Because the Court is already inflicting the sanction of default judgment, it will not also issue an order to show cause for the imposition of other sanctions. However, the Court notes that the factors to consider when ruling on an order to show cause weigh in favor of the issuance of such an order. Specifically, NMCG had knowledge of the Court's Order requiring a Rule 1-030(B)(6) deposition, and it had an ability to comply with that Order.

The July 5 Motion: On May 18, 2022, the Court entered an order granting Defendant New Mexico Civil Guard's former counsel's Unopposed Motion to Withdraw, filed May 16, 2022. The Court ordered that "Defendant New Mexico Civil Guard shall retain new counsel within twenty (20) days from the date of this Order." Order at 1. Defendant New Mexico Civil Guard did not retain counsel within the time period prescribed by the Court. Because an entity like Defendant New Mexico Civil Guard must be represented by counsel pursuant to Rule LR2-113(C) NMRA, default is appropriate. Default is also appropriate under Rule 1-055 NMRA, because Defendant

New Mexico Civil Guard has “failed to . . . defend,” as provided by the rule. *See Kutz v. Indep. Publ’g Co. Inc.*, 1984-NMCA-081, ¶ 12.

Accordingly: The Court hereby enjoins Defendant New Mexico Civil Guard and its directors, officers, agents, employees, and members, and its successor organizations and members, from:

- a. organizing and operating in public as part of a military unit independent of New Mexico’s civil authority and without having been activated by the Governor of New Mexico;
- b. assuming law-enforcement functions by using or projecting the ability to use organized force at protests, demonstrations, or public gatherings.

Plaintiff shall submit within 10 days of the entry of this Order an affidavit of its reasonable expenses caused by the failure of NMCG to produce a Rule 1-030(B)(6) deponent, including expenses related to the April 11 Motion. NMCG, if it is represented by counsel, will then have 10 days to object. Plaintiff will then either submit a proposed order reflecting the awarded expenses or, if NMCG retains counsel and files objections, the parties will file competing proposed orders.

IT IS SO ORDERED.



**ELAINE P. LUJAN
DISTRICT COURT JUDGE**

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